

Form IFP-1 S.D. of Ohio (Rev. 11/20/96)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

REMONTE MCDADE

Plaintiff(s)

:

-vs-

Case No. C-1-00-1016

HARRY RUSSELL, Warden

Defendant(s)

**APPLICATION AND AFFIDAVIT BY INCARCERATED PERSON
TO PROCEED WITHOUT PREPAYMENT OF FEES**

**NOTICE TO PRISONERS REGARDING
PROCEEDINGS *IN FORMA PAUPERIS***

Prisoner account statement required. Pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-131, 110 Stat. 1321, § 804(a) (1)-(3), 28 U.S.C. § 1915(a)-(h), a prisoner seeking to bring a civil action without prepayment of fees or security therefor must submit a certified copy of the trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of the complaint obtained from the cashier of the prison at which the prisoner is or was confined. 28 U.S.C. § 1915(a)(2).

Filing Fees. The current fees for filing a habeas corpus petition, civil complaint, and notice of appeal are:

- Habeas corpus petition \$5.00
- Civil complaint \$150.00
- Appeal \$105.00

Prisoners must pay the full filing fee. If a prisoner brings a civil action *in forma pauperis*, the prisoner shall be required to pay the full amount of the filing fee. 28 U.S.C. § 1915(b)(1)

Initial partial filing fee. The Court will assess and, when funds exist, collect, as partial payment of the filing fee, an initial partial filing fee of 20 percent of the greater of:

- (1) the average monthly deposits to the prisoner's account; or
- (2) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint.

28 U.S.C. § 1915(b)(1)

Monthly payments. After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The cashier of the prison shall forward payments from the prisoner's account to the Clerk of the Court each time the amount in the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

If you cannot pay the initial partial filing fee. In no event shall a prisoner be prohibited from bringing a civil action for the reason that the prisoner has no assets and no means by which to pay the initial filing fee. 28 U.S.C. § 1915(b)(4).

Example of how the filing fee will be assessed and collected. If Prisoner A had an average monthly balance in his/her prisoner's account for the previous six months of \$2 and average monthly deposits of \$20, then his/her initial partial filing fee would be \$4, because the greater of his/her average monthly balance (\$2) and average monthly deposits (\$20) is \$20 and 20% of \$20 is \$4:

$$\begin{aligned}\text{Average monthly deposit} \times 20\% &= \text{Initial partial filing fee} \\ \$20 \times .20 &= \$4.00\end{aligned}$$

The Court would send an Order to the Prison Cashier requiring the cashier to forward \$4 to the Clerk of Court. If there is more than \$10 in the Account, the Cashier would forward \$4 to the Clerk of Court. If there is \$10 or less in the account, the Cashier would place a hold on the account. When the money in the account exceeded \$10, the Cashier would then withdraw \$4 and forward it to the Clerk of Court.

The Court's Order would also require the Cashier to collect each month a monthly payment of 20% of the preceding month's income credited to Prisoner A's account. If in the first month following the payment of the initial partial filing fee Prisoner A received \$20 in State pay and no other monies were deposited in his account, his monthly payment would be \$4 ($\$20 \times .20 = \4). If in the second month following the payment of the initial partial filing fee Prisoner A received \$20 in State pay and \$50 from his family, his monthly payment would be \$14 ($\$70 \times .20 = \14). Every month the deposits in Prisoner A's account exceeded \$10, the prison Cashier would assess, collect,

and forward to the Clerk of court a monthly payment of 20% of that month's total deposits. Each month the Cashier would continue to assess and collect monthly payments until the entire filing fee is paid.

Administrative remedies. Prisoners must exhaust available administrative remedies before bringing a civil action in federal court under 42 U.S.C. §1983 or any other federal law. The failure to exhaust such administrative remedies will result in the dismissal of the civil action. 42 U.S.C. §1997e(a). Prisoners seeking federal habeas corpus relief must first exhaust their available state court remedies under 28 U.S.C. 2254 (b).

Court required to dismiss complaints which are frivolous, malicious, or fail to state a claim. The Court is required to dismiss any action brought by a prisoner confined in any jail, prison, or other correctional facility with respect to prison conditions under 42 U.S.C. §1983 or any other federal law if the Court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. 42 U.S.C. §1997e(c)(1); 28 U.S.C. § 1915A.

Even if the complaint is dismissed, you must pay the entire filing fee. Dismissal of a civil action at any stage of the proceedings for any reason, including dismissals for failure to exhaust administrative remedies or dismissals on the basis that the claim is frivolous, malicious, or fails to state a claim upon which relief can be granted, will not release the prisoner from the obligation to pay the total filing fee. 28 U.S.C. §1915(b)(1).

Even if the Court dismisses the complaint the same day leave to proceed *in forma pauperis* is granted, the prisoner must pay the entire filing fee. If the filing fee has not been paid when the prisoner is released from prison, the prisoner remains liable for the amount due. See, 11 U.S.C. §523(a)(17).

If a federal court has dismissed your complaints or appeals as frivolous, malicious or failing to state a claim three times in the past, you cannot proceed in forma pauperis in a new case absent a threat of imminent, serious physical injury. A prisoner who has on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, cannot proceed *in forma pauperis* unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. §1915(g).

AFFIDAVIT

ALL REQUESTED INFORMATION IN THE FOLLOWING AFFIDAVIT
MUST BE FURNISHED. IF YOU FAIL TO COMPLETE ANY ITEM, THIS
APPLICATION WILL BE RETURNED TO YOU WITHOUT FILING

I, Remonte McDade, declare that I am the (check appropriate box):

☒ petitioner/plaintiff/movant ☐ Other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of the full filing fee or costs under 28 U.S.C. §1915, I declare that I am unable to prepay the full filing fee or the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under the penalty of perjury:

1 Are you currently incarcerated ☒ Yes ☐ No

If "Yes", state the place of incarceration

Lebanon Correctional Institution

(If "No", this is the wrong form for you. You should request the Non-Prisoner Declaration in Support of Request to Proceed *In Forma Pauperis*.)

2 Do you have a work, program, status assignment or other circumstances which causes you to be paid by prison, jail, or other custodial institution?

☒ Yes ☐ No

If "Yes", state the amount credited to you each month: \$ 17 /month.

3 In the past 12 months have you received any money from the following sources? If so, state the total amount received.

			<u>Amount</u>
a. Business, profession or other self-employment	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	\$ <u> </u>
b. Rent payments, interest or dividends	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	\$ <u> </u>
c. Pensions, annuities or life insurance payments	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	\$ <u> </u>

- d. Disability or workers compensation payments ☐ Yes ☒ No \$ _____
- e. Gifts or inheritances ☒ Yes ☐ No \$ 15 / month
- f. Any other sources ☐ Yes ☒ No \$ _____

If the answer to any of the above is "Yes", describe each source of money and state the amount received and what you expect you will continue to receive.

\$15/month from mother

- 4 Do you have any cash or checking or savings accounts outside the prison?
☒ Yes Amount \$ 920 ☐ No
- 5 Do you have a secondary savings account, such as a certificate of deposit or a savings, bond, which is recorded by the prison cashier?
☐ Yes Amount \$ _____ ☒ No
- 6 Do you own any assets, including real estate, stocks, bonds, securities, other financial instruments, automobiles or other valuable property?
☐ Yes Amount \$ _____ ☒ No

If "Yes", describe each asset and state its value.

<u>Asset</u>	<u>Value</u>
Autos _____ (Make/model/year) _____	\$ _____
Stocks _____	\$ _____
Bonds _____	\$ _____
Notes _____	\$ _____
Real Estate _____ \$ _____ (mortgage)	\$ _____
Other _____	\$ _____

7. Have you on three or more prior occasions, while incarcerated or detained in any prison, jail or other facility, brought an action in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted?

☐

Yes



No

If "Yes" list the dismissals since April 26, 1996:

Date Dismissed	Case Name	Case No.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have submitted above a complete statement of all the assets I possess and that all of the information is true and correct.

I understand that my signature below authorizes the institution of incarceration to forward from my account to the Clerk of the Court any initial partial filing fee assessed by the Court in the amount of 20 percent of the greater of the average monthly deposits to my prison account or the average monthly balance in my prison account for the six-month period immediately preceding the filing of the complaint. Thereafter, I authorize the institution of incarceration to forward monthly payments of 20 percent of my preceding month's income credited to my prison account until I have paid the full amount of the filing fee.

8-28-03

DATE

Remonte A. Mc Dale 364-843

SIGNATURE OF APPLICANT

Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of your prison trust account statement from the institution(s) of your incarceration showing at least the past six months' transactions.

CERTIFICATE**(To be completed by the institution of incarceration)**

I certify that the applicant named herein has the sum of \$ 29.88 on account to his /her credit at (name of institution) Lebanon Correctional Institution. I further certify that during the past six months the applicant's average monthly balance was \$ 49.48 and the applicant's average monthly deposits were \$ 11.25. I have attached a certified copy of the applicant's prison trust fund account statement showing at least the past six months' transactions.

I further certify that the applicant does/does not have a secondary savings account(s), such as a certificate of deposit or a savings bond. The secondary account(s) balance is \$ -0-.

8/28/03
DATE

Ron Watts
SIGNATURE OF AUTHORIZED OFFICER

FOR DEBIT : .00
 CREDIT BALANCE : .00

TO LOC: LEC
 TO DATE:

TRAN	TC	SF	OPR	T/C	DESC	MISC	DESC	ACCOUNT
AMOUNT								BALANCE
17.00	30	00	MC		EARNINGS			71.14
50.00	31	00	MC		RECEIPTS-M	KATHRYN	MCDAD	121.14
						MD		
20.63	01	00	MC		COMMISSARY	016640		100.51
19.70	02	00	MC		CHECK OUTS	ONE DROP	BOOKS	81.81
10.00	31	00	VLL		RECEIPTS-M	KATHY	MCDAD	91.81
						MOTHER		
10.00	31	00	MC		RECEIPTS-M	KATHRYN	MCDAD	101.81
						?		
19.87	01	00	MC		COMMISSARY	017771		81.94
10.00	31	00	MC		RECEIPTS-M	KATHRYN	MCDAD	91.94
						MC		
2.00	02	00	MC		CHECK OUTS	WORLD	CHALLENGE	89.94
17.00	30	00	MC		EARNINGS			106.94
27.72	01	00	MC		COMMISSARY	018539		79.22
10.00	02	00	MC		CHECK OUTS	SPECIAL	HELP DEPT	69.22
20.23	01	00	MC		COMMISSARY	019587		48.99
17.00	30	00	MC		EARNINGS			65.99
13.74	01	00	MC		COMMISSARY	020373		52.25
2.00	06	06	MC		SALES	CAA		50.25
						CARDS		
10.00	31	00	MC		RECEIPTS-M	CHEKIE	GARCES	60.25
						SIS		
8.50	30	01	MC		EARNINGS	A/P-TRANSFER-051403		68.75
17.00	03	00	MC		TRANSFERS	29293		.00
								.00
					TOTAL DEBITS			418.27
					TOTAL CREDITS			297.00
					CURRENT BALANCE			72.11

TO LOC: LEC
TO DATE:

TRAN	AMOUNT	TO	SP	OPR	T/C	DESC	MISC	DESC	ACCOUNT
									BALANCE
16.26-	01 00 MC	COMMISSARY	008414						131.27
6.50	30 00 MC	EARNINGS							115.01
5.00	31 00 IJS	RECEIPTS-M	KATHY MCDADE						121.51
			MO						126.51
07-	01 01 VLL	COMMISSARY	9200	COMMISSARY	SALE				98.44
1.00	31 00 MC	RECEIPTS-M	KATHY MCDADE						103.44
			MO						
00-	01 00 VLL	COMMISSARY	010114						79.44
1.00	30 00 MC	EARNINGS							96.44
1.00-	02 00 MC	CHECK OUTS	LIFE STUDY	HELP	DEPT				77.44
1.50-	01 00 MC	COMMISSARY	010997						55.94
1.00	31 00 MC	RECEIPTS-M	KATHY MCDADE						75.94
			MO						
00-	01 00 VLL	COMMISSARY	012016						57.54
1.00-	19 00 VLL	MEDICAL CO	122802	MED	CO-PAY				54.54
1.00	30 00 VLL	EARNINGS							71.54
1.71-	01 00 MC	COMMISSARY	012850						48.83
1.00-	02 00 MC	CHECK OUTS	LIFE STUDY	HELP	DEPT				41.83
1.33-	01 00 MC	COMMISSARY	013872						23.50
1.00	30 00 MC	EARNINGS							40.50
1.00	31 00 MC	RECEIPTS-M	KATHRYN MCDADE						60.50
			MO						
1.00	01 00 MC	COMMISSARY	014673						44.51
1.00	31 00 MC	RECEIPTS-M	KATHRYN MCDADE						49.51
			MO						
1.00	31 00 MC	RECEIPTS-M	CHERIE JONES						69.51
			SIS						
1.37-	01 00 MC	COMMISSARY	015748						51.14
1.00	02 00 MC	CHECK OUTS	WORLD CHALLENGE	INC.					49.14
1.00	31 00 MC	RECEIPTS-M	KATHRYN MCDADE						54.14
			MO						

AUG 28, 2003

SECTIONAL

PAGE 1

02/01/2003 THREE MONTHS INMATE DEMAND STATE

INMATE NUMBER: A364843

LOCK LOCK: 1249

INMATE NAME: MCDADE, REMONTE

SHOP CYCLE: H

AKA:

STATUS: A

FROM LOC:

MISC A: 0

FROM DATE:

MISC B:

D.O.B.:

NOTE:

HOLD TOTAL: .00

TO LOC:

E.P.C. BALANCE: .00

TO DATE:

TRAN DATE	TRAN AMOUNT	TO SF	OPR	1/0	DESC	MISC DESC	ACCOUNT BALANCE
05/27/03	15.24	01	00	MK	COMMISSARY 039054		22.65
05/27/03	60.75	32	00	RPW	TRANSFERS TRANSFERS IN WCI		7.41
06/03/03	22.49	01	00	MK	COMMISSARY 040069		76.16
06/04/03	2.25	30	00	TW	EARNINGS		
06/05/03	2.44	03	00	MK	POSTAGE KATHRYN MCDADE		53.67
06/17/03	23.66	01	00	MK	COMMISSARY 041596		55.92
06/24/03	13.24	01	00	MK	COMMISSARY 042643		53.48
06/30/03	5.00	31	00	MK	RECEIPTS-M KATHY MC DADE		29.82
07/01/03	11.22	01	00	MK	COMMISSARY 000176		16.58
07/03/03	5.00	31	00	MK	RECEIPTS-M KATHRYN MC DADE		21.58
07/08/03	9.00	30	00	TW	EARNINGS		
07/09/03	8.56	01	00	MK	COMMISSARY 001054		53.67
07/14/03	5.00	31	00	TJ	RECEIPTS-M KATHRYN MC DADE		55.92
07/16/03	12.49	01	00	MK	COMMISSARY 001843		53.48
07/29/03	7.07	01	00	MK	COMMISSARY 003157		29.82
08/01/03	5.00	31	00	RPW	RECEIPTS-M KATHRYN MCDADE		1.24
08/05/03	9.00	30	00	TW	EARNINGS		
08/06/03	5.95	01	00	TJ	COMMISSARY 004238		6.24
08/07/03	20.00	31	00	PM	RECEIPTS-M CHARLES		15.24
08/14/03	9.41	01	00	PM	COMMISSARY 005396		9.29
08/14/03	5.00	31	00	PM	RECEIPTS-M KATHRYN MCDADE		29.29
08/19/03	5.00	31	00	TW	RECEIPTS-M KATHY MCDADE		19.88
CUR. BAL							24.88
					TOTAL DEBITS		131.77
					TOTAL CREDITS		139.00
					AVERAGE BALANCE		24.79